IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 389 of 2004
with
FIRST APPEAL No 390 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MINOR NAINABEN NAJABHAI BAMBHANIA

Versus

KANTIBHAI JIVABHAI CHUDASAMA (DELETED AS PER COURT ORDER

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Appearance:

1. First Appeal No. 389 of 2004
MR DC SEJPAL for Appellant No.
DELETED for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
MR RR MARSHALL for Respondent No. 3

2. First Appeal No. 390 of 2004
MR DC SEJPAL for Appellant No.
DELETED for Respondent No. 1
MR RR MARSHALL for Respondent no.3

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 29/09/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.D.C.Sejpal for the appellant and learned Advocate Mr.Marshall for respondent no.3. Respondent no.2, though served, has chosen not to contest these appeals.

2. In the facts and circumstances of the case, since the issue involves question of interim compensation payable under Section 140 of the Motor Vehicles Act,1988 (for short "the Act"), these appeals are, with consent of parties, taken up for final hearing.

3. The only question that arises for determination of this Court is, whether the Tribunal committed an error in rejecting application of the appellant claiming interim compensation under Section 140 of the Act in face of medical certificate indicating permanent partial disablement sustained by them.

4. There is no dispute about the fact that the appellants met with a vehicular accident on 18th February,2002 and sustained fracture injuries therefrom. There is no dispute about the fact that vehicle was owned by respondent no.2 and was insured with respondent no.3 -Insurance Company. There is no dispute regarding liability part also.

5. The Tribunal accepted the contention of the Insurance Company that the permanent partial disability claimed to have been sustained by the appellants is a matter to be proved at the time of hearing of main claim petition in exercise of powers under Section 166 of the Act. The Tribunal observed that as the doctor has given the certificate about the appellants sustaining 2% permanent partial disablement in respect of body as a whole which is required to be scrutinised at the time of deciding application under Section 166 of the Act and, therefore, ultimately rejected the claim. Aggrieved by the said order, the claimants have preferred these appeals.

6. Even on plain perusal of Section 140 of the Act, it is difficult to sustain the view taken by the Tribunal. Section 140 of the Act contemplates two situation (i) death and (ii) permanent partial disablement resulting out of a vehicular accident. Here the claim is rejected only on the ground that because the permanent partial disablement is only of 2%, it requires scrutiny. The doctor has, in his certificate, in terms, indicated that both the claimants had sustained fracture

and had sustained 4% permanent disablement of the limb and 2% permanent disability of the body as a whole. The percentage of disability is hardly relevant so far as award of interim compensation under Section 140 of the Act is concerned. The object behind the provision would be frustrated, if claim is to be disallowed only on such ground. Had the legislature such intention, it would have so incorporated in the language of Section, which interprets a provision, what is not there cannot be read. Therefore, in the opinion of this Court, these appeals deserve to be allowed.

7. The judgment and award is set aside. The respondent shall pay an amount of Rs.25,000/- to each of the claimants with interest at the rate of 7% with costs.

(A.L.Dave,J.)

(vipul)